

**United States Department of Labor
Employees' Compensation Appeals Board**

ROBERT A. RUSSELL, Appellant

and

**DEPARTMENT OF AGRICULTURE, KAIBAB
NATIONAL FOREST, Williams, AZ, Employer**

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**Docket No. 05-934
Issued: July 12, 2005**

Appearances:
Robert A. Russell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 10, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 31, 2004 and January 3, 2005 merit decisions denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after September 3, 1999 due to his January 3, 1973 employment injury.

FACTUAL HISTORY

The Office accepted that on January 3, 1973 appellant, then a 24-year-old hydrologist, was in a motor vehicle accident and sustained lacerations of his upper and lower eyelids, nose and the area above his lips and a fracture of his nose and the tibial plateau of his left leg.¹ On

¹ Appellant's job required him to engage in a notable amount of walking while performing field work.

January 8, 1973 appellant underwent an open reduction surgery with tibial bolt fixation and iliac bone graft which was authorized by the Office.

Appellant returned to his regular work for the employing establishment in April 1973. By decision dated May 28, 1974, appellant received a schedule award for a 13 percent permanent impairment of his left leg; in 1980 he received another award for an additional 12 percent permanent impairment of his left leg. In a report dated December 10, 1980, Dr. Oliver E.K. Hall, a Board-certified orthopedic surgeon and Office referral physician, noted that appellant reported that sometimes his left knee was bothered by walking on rough terrain as required by his job as a hydrologist. Dr. Hall indicated that x-ray testing revealed an old healed fracture of the left tibial plateau and diagnosed traumatic degenerative changes of the lateral compartment of the left knee.²

In November 2003 the record was supplemented to include a September 13, 1999 Form CA-2a in which appellant alleged that he sustained a recurrence of disability on September 3, 1999 due to his January 3, 1973 employment injury. Appellant indicated that he did not stop working for the employing establishment but noted that he had experienced limited range of motion and variable pain in his left knee since January 3, 1973. He claimed that he recently experienced increased pain and a locking sensation in his left knee and suggested that the progressive degenerative process in his left knee was employment related. It is unclear whether the claim was acted upon in 1999. The record also contains a March 5, 2003 letter in which appellant made similar assertions that he sustained a recurrence of disability on September 3, 1999 due to his January 3, 1973 employment injury. The record reveals that appellant was performing his regular full-time work in September 1999.

Appellant submitted treatment notes dated between September 3 and October 3, 1999 in which Dr. David C. King, an attending Board-certified orthopedic surgeon, stated that appellant had reported experiencing increased pain and a locking sensation in his left knee during the several prior weeks. Dr. King noted that appellant had some limitation of range of motion in his left knee and indicated that diagnostic testing showed degenerative arthritis of his left knee. He indicated that appellant underwent arthroscopic surgery of the left knee in late September 2003 to remove a loose body.³

By letter dated February 25, 2004, the Office requested that appellant submit additional factual and medical evidence in support of his recurrence of disability claim.

By decision dated March 31, 2004, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after September 3, 1999 due to his January 3, 1973 employment injury.

Appellant requested a hearing before an Office hearing representative which was held on September 28, 2004. He testified that he did not seek medical treatment for his left leg condition between 1980 and 1999 because his condition did not dramatically deteriorate until 1999.

² In August 1980 appellant filed a claim for recurrence of disability due to his January 3, 1973 employment injury. However, he did not stop work at that time and it does not appear that the claim was accepted.

³ The record does not contain the actual report of this surgery.

Appellant submitted a September 14, 2004 report in which Dr. Robert Nakken, an attending Board-certified orthopedic surgeon, stated that appellant was involved in an accident in 1973 which caused a lateral tibial plateau fracture. Dr. Nakken noted that appellant underwent open reduction with internal fixation at that time and, after having some persistent problems, underwent a knee scope in 1999 to “clean it out.” He indicated that appellant experienced progressive pain since that time but continued to work. Dr. Nakken stated that appellant had limited left knee motion on examination, described the findings on diagnostic testing, and diagnosed severe post-traumatic arthritis of the left knee. He stated, “It is common after lateral tibial plateau fractures to proceed on to post-traumatic arthritis with varus and valgus deformity. It is clear to me that his current condition is related to his accident in 1973.”

By decision dated and finalized January 3, 2005, the Office hearing representative affirmed the Office’s March 31, 2004 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁴ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

ANALYSIS

On January 3, 1973 appellant sustained lacerations of his upper and lower eyelids, nose and an area above his lips and a fracture of his nose and the tibial plateau of his left leg. On January 8, 1973 he underwent an open reduction surgery with tibial bolt fixation and iliac bone graft. Appellant returned to his regular work for the employing establishment in April 1973 and later claimed that he sustained a recurrence of disability on September 3, 1999 due to his January 3, 1973 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after September 3, 1999 due to his January 3, 1973 employment injury.

⁴ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”

⁵ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

Appellant submitted treatment notes dated between September 3 and October 3, 1999 in which Dr. King, an attending Board-certified orthopedic surgeon, indicated that he reported increased left knee symptoms and noted that he had some limitation of range of motion in his left knee. Dr. King diagnosed degenerative arthritis of the left knee and indicated that appellant underwent arthroscopic surgery of the left knee in late September 2003 to remove a loose body. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.⁷ Dr. King did not mention appellant's January 3, 1973 employment injury or provide any indication that it was responsible for his left knee condition or necessitated his surgery in September 2003, nor did he provide any opinion on appellant's disability during that period or otherwise indicate that he sustained an employment-related recurrence of disability on or after September 3, 2003.

Appellant submitted a September 14, 2004 report in which Dr. Nakken, an attending Board-certified orthopedic surgeon, provided a brief description of his medical history including his 1973 injury and surgery. Dr. Nakken reported appellant's left knee symptoms and noted that he had limited left knee motion on examination. He diagnosed severe post-traumatic arthritis of the left knee. He stated, "It is common after lateral tibial plateau fractures to proceed on to post-traumatic arthritis with varus and valgus deformity. It is clear to me that his current condition is related to his accident in 1973." This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Nakken did not provide adequate medical rationale in support of his conclusion on causal relationship.⁸ The Office has not accepted that appellant sustained degenerative disease of the left knee on January 3, 1973 and Dr. Nakken did not provide adequate medical rationale explaining how such a condition was due to the employment injury. He did not describe the January 3, 1973 employment incident in any detail or explain why appellant's condition in 2004 was not due to some nonwork-related problem. Such medical rationale is particularly necessary as it does not appear that appellant sought medical care for 19 years between 1980 and 1999 and then for another five years between 1999 and 2004. Moreover, Dr. Nakken did not provide an opinion on the extent of appellant's disability or otherwise clearly indicate that he had sustained a recurrence of disability.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁸ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after September 3, 1999 due to his January 3, 1973 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 3, 2005 and March 31, 2004 decisions are affirmed.

Issued: July 12, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member